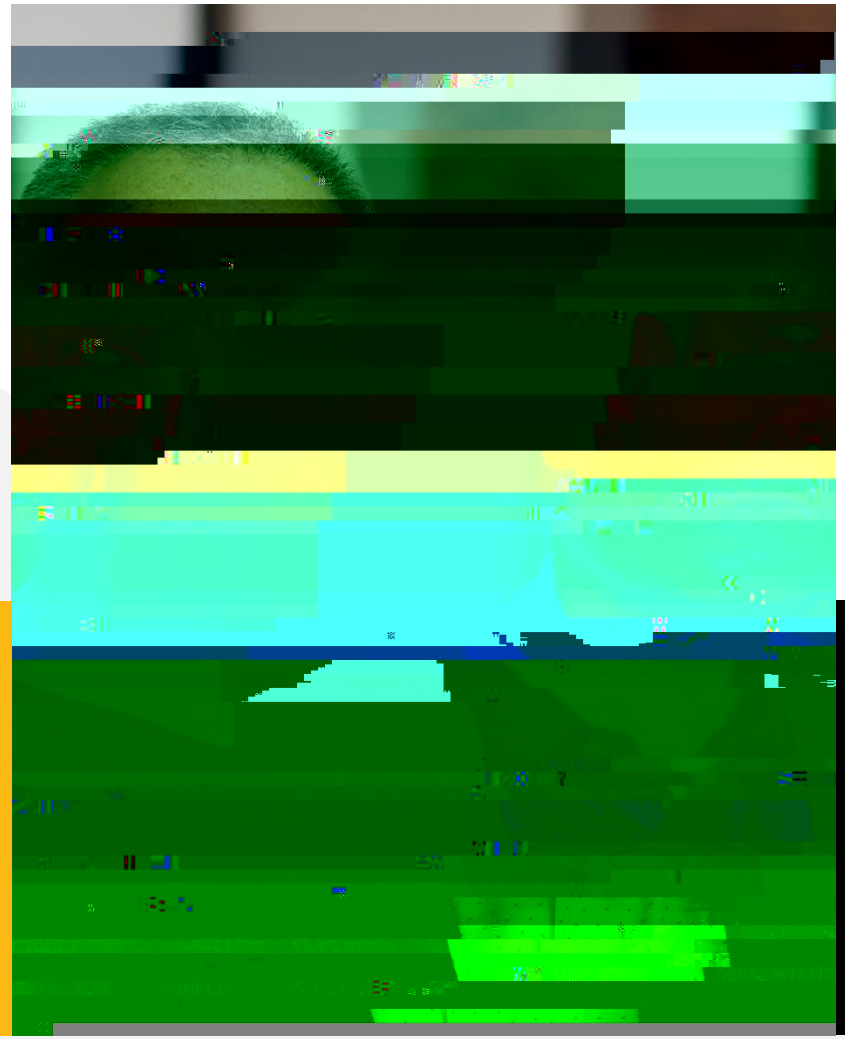
AT THE HEART OF HIGHER EDUCATION

August 18, 2021

Attorney Work Product © 2024 Barnes & Thornburg LLP. All Rights Reserved.



TEAM LEAD

Grand Rapids, MI

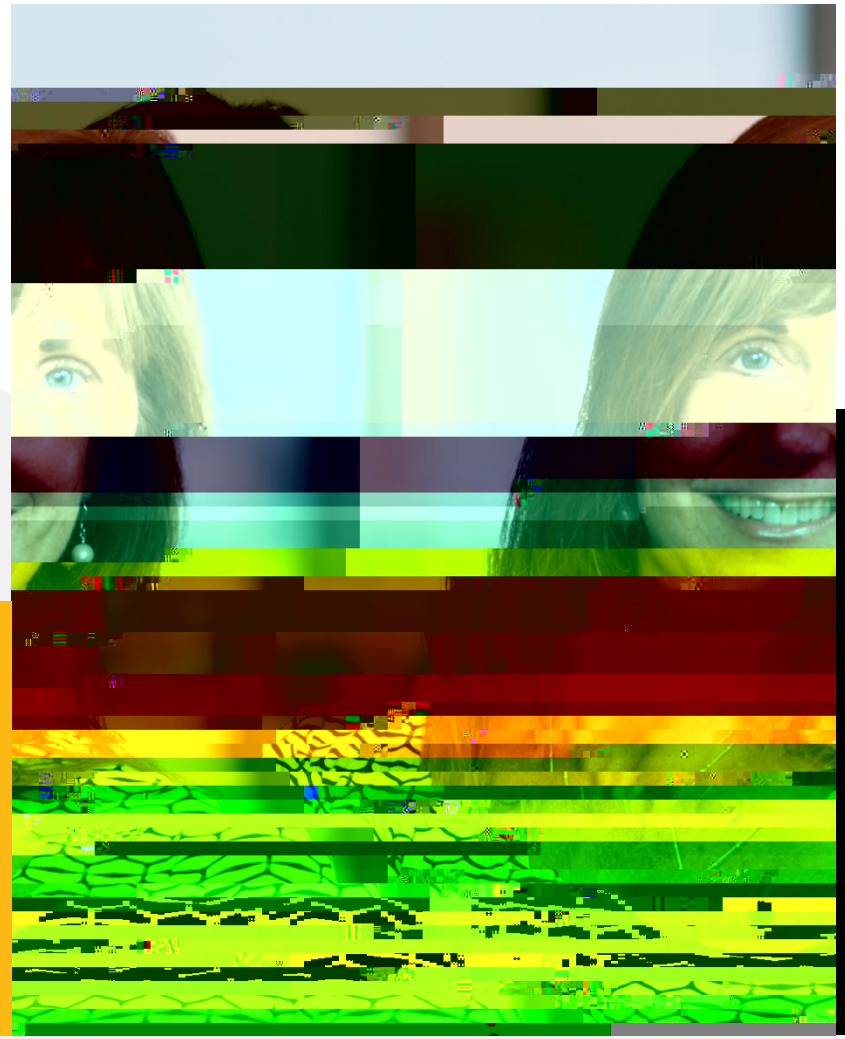
616-[illegible]-3994

A significant portion of Don' practice is devoted to [illegible] and employment matters and student affairs [illegible] accessibility issues.

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

TEAM LEAD

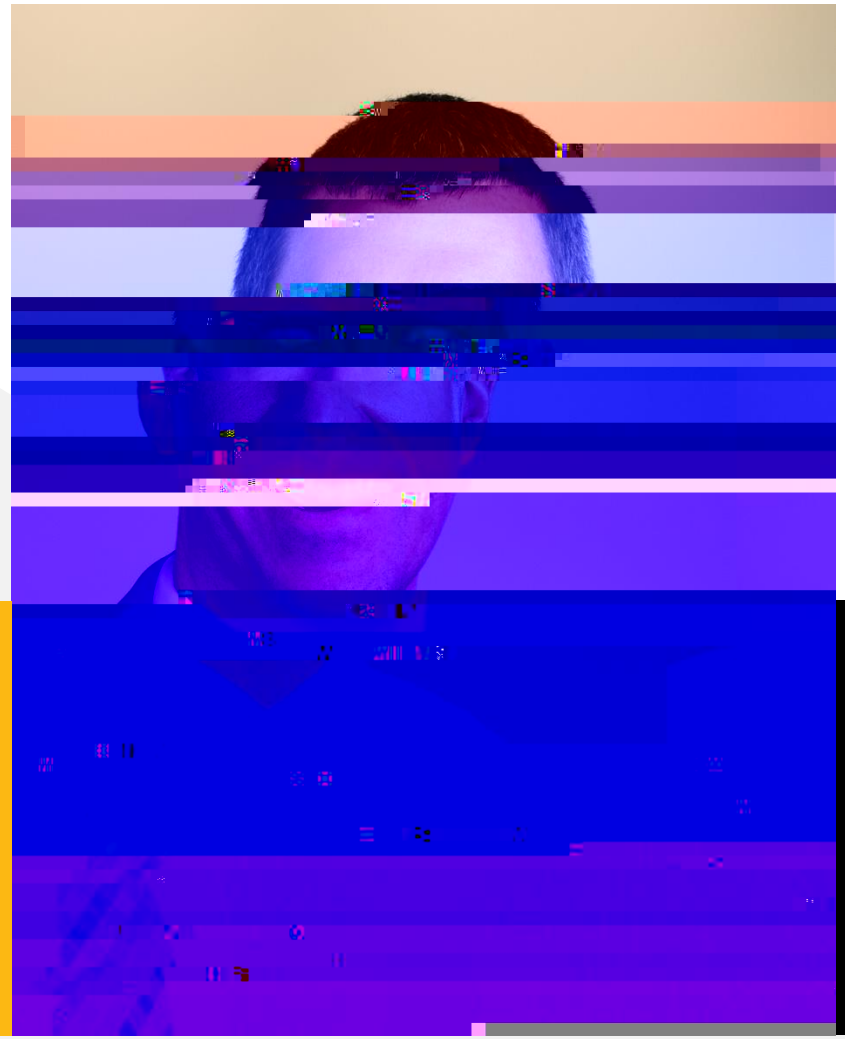
Tracy Maginn



teresa.maginn@btlaw.com
[redacted]172

As a member of Barnes & Thornburg's labor and employment group, Teresa advises clients on a variety of employment-related matters, including discrimination and harassment claims, wage and hour issues, and disability management. She has extensive litigation experience. [redacted] personal injury defense. Clients include institutions of higher education as well as K[redacted]

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.



TEAM LEAD

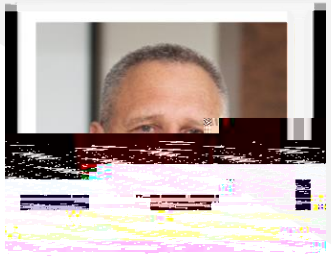
[redacted]

[redacted]

[redacted]-425-4618

[redacted] is also a member of the firm's School Law Practice Group, [redacted] -secondary public and [redacted] discrimination complaints, sports and other extra-curricular issues, and civil litigation.

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, [redacted] intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.



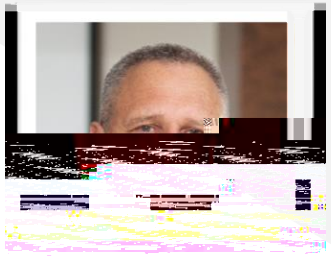
YOU ARE LISTENING TO: DON LAWLESS

Title IX of the Educational Amendments of 1972 to the Civil Rights Act of 1964

"No [redacted]

financial assistance."

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.



YOU ARE LISTENING TO: DON LAWLESS

[illegible]

‡ [illegible]

through a formal notice and [illegible]

‡ [illegible]

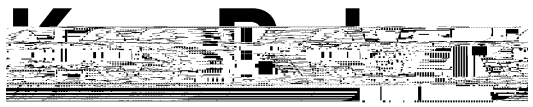
‡ Final regulations [illegible]

‡ Effect of Coronavirus?

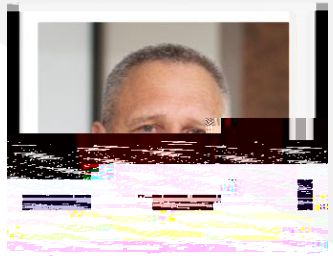
‡ Remember—the regulations are the law! [illegible]

CONFIDENTIAL. ©2020 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

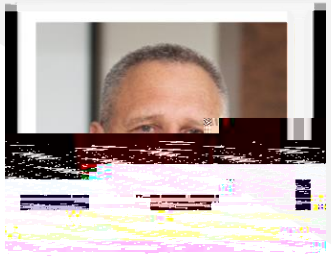
- [illegible]
- Roles (the same but different)
- [illegible]
- Scope of Coverage
- [illegible]
- [illegible]
- Retention of Records



YOU ARE LISTENING TO: DON LAWLESS



CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

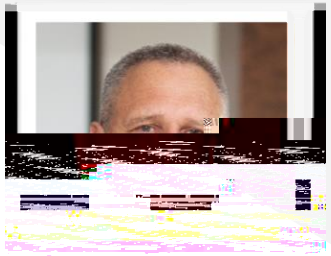


YOU ARE LISTENING TO: DON LAWLESS

[redacted]

(2) [redacted] **and** objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or

YOU ARE LISTENING TO: DON LAWLESS

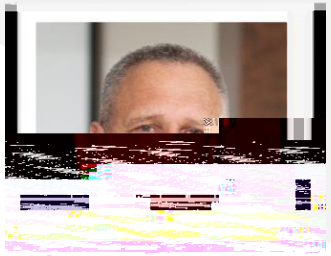


‡ [redacted]

activity, against a person in the United States."

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: DON LAWLESS

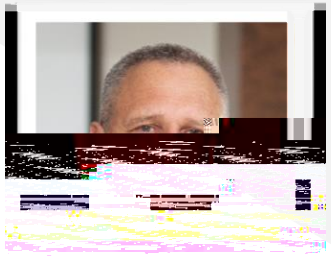


Reporting Who can

In Arizona, any person who discovers that a minor is or may be a victim of sexual abuse, sexual assault, or sexual exploitation, or any person who observes a minor under circumstances in which a reasonable person would believe that the minor is or may be a victim of sexual abuse, sexual assault, or sexual exploitation, shall immediately report or cause reports to be made of this information to a peace officer or to child protective services in the department of child safety. A person required to report or cause reports to be made who fails to do so is guilty of a class 1 misdemeanor. The requirement to report or cause reports to be made does not apply to a person who has reasonable cause to believe that the only sexual abuse, sexual assault or sexual exploitation that occurred is not reasonably likely to have been committed by a person responsible for the child's care, custody or welfare and that no other child is reasonably likely to be harmed because of the same person. A person who reports or causes reports to be made in accordance with this section is not liable for civil damages that may result from reporting the information. The person reporting is the person alleged to be the victim of conduct that could constitute sexu

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

CONFIDENTIAL ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information



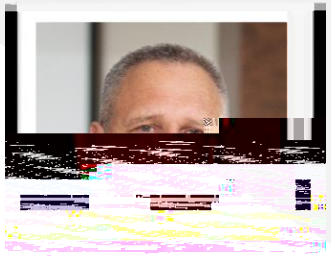
YOU ARE LISTENING TO: DON LAWLESS

Report? Who can

How?

When?

CONFIDENTIAL © 2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.



YOU ARE LISTENING TO: DON LAWLESS

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

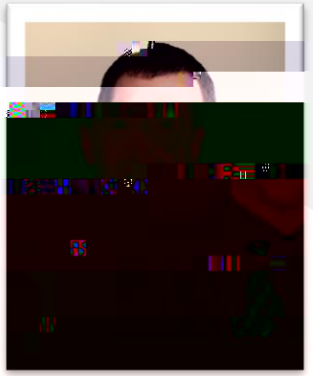
[redacted] Who?

- [redacted]
- [redacted]

Procedures, Motions & Hearings

- “Single Investigator” Model is banned
- Live Hearings
- Advisors
- Cross-Examination

YOU ARE LISTENING TO: TRACY MAGINN, MARK SCUDDER



Big Picture Items

- [redacted]
- [redacted]

and respondents

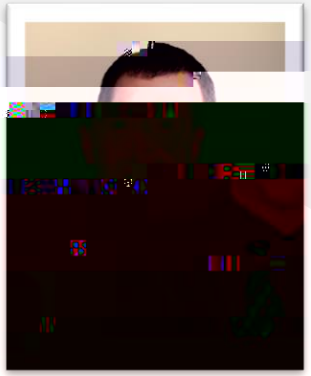
CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

Big Picture Items

- Single investigator models no longer allowed
  - [redacted]

‡ Conduct hearings
  ‡ Interview witnesses, garner evidence, etc.
‡ Process the evidence to both sides
‡ Finalize the report
‡ Conduct a hearing

YOU ARE LISTENING TO: TRACY MAGINN, MARK SCUDDER

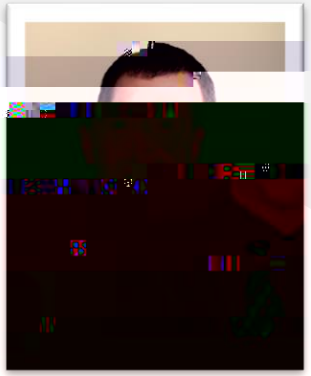


Jurisdiction Investigation

- [illegible]
  - [illegible]
- [illegible]
  - Texts, e-mails, pictures
- [illegible]
  - [illegible]
- [illegible]

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: TRACY MAGINN, MARK SCUDDER

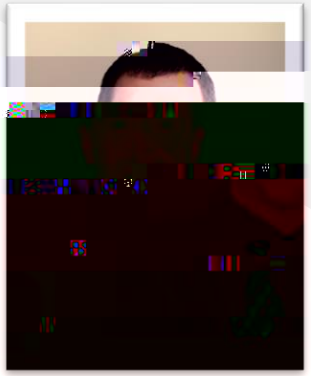


Evidence Gathering

- [illegible]
- [illegible]
- [illegible]
- [illegible]
  for the party to prepare
- [illegible]
  opportunity to respond to evidence

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, and intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: TRACY MAGINN, MARK SCUDDER

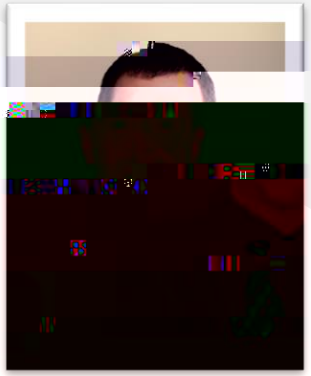


Interview Basics

- Typical strategy for witness interviews:
  - Put the witness at ease;
  - Begin with open-ended questions;
  - Let the witness give a narrative;
  - Ask questions about the narrative, all questions that you have about the narrative, and questions outside the narrative.
- Don't [illegible]

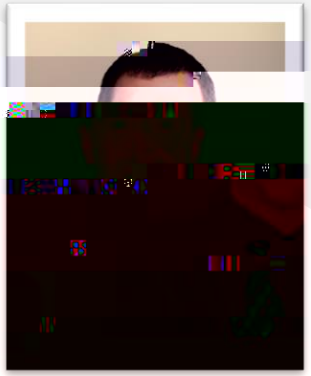
CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: TRACY MAGINN, MARK SCUDDER



CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: TRACY MAGINN, MARK SCUDDER

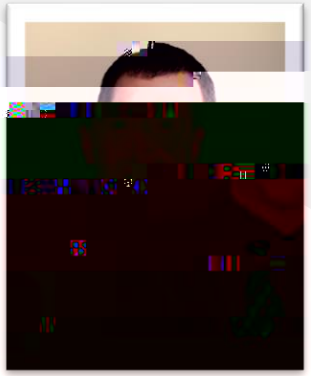


Questioning

- [redacted]ended conversation
- The narrative – [redacted]
  - Fill in the gaps and get specifics
- Questions outside the narrative are particularly helpful for third-party witnesses
- Reasoned Judgment
-
-
  [redacted]

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, and intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: TRACY MAGINN, MARK SCUDDER



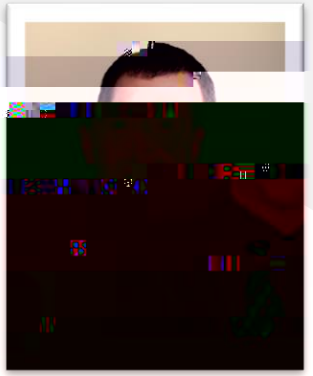
Making Credibility

- Watch for witnesses changing their story + particularly after witnesses may have talked with one another
- [redacted]
- Does it make sense?
- [redacted]

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, and intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

CONFIDENTIAL © 2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: TRACY MAGINN, MARK SCUDDER

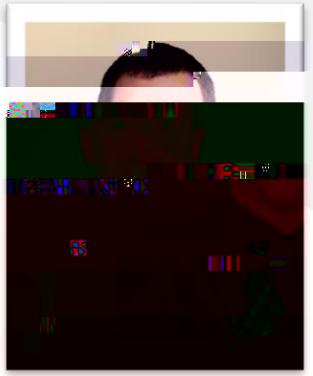


[redacted]

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

CONFIDENTIAL ©2022 Bureau Veritas | All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, ormation

YOU ARE LISTENING TO: TRACY MAGINN, MARK SCUDDER



[redacted] with Complainant #2

Discuss: [redacted]

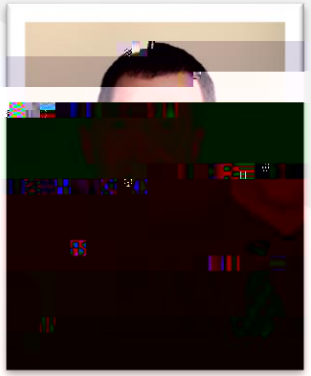
CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

interview

Last up is one final interview featuring a friend of the complainant, Olivia

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: TRACY MAGINN, MARK SCUDDER



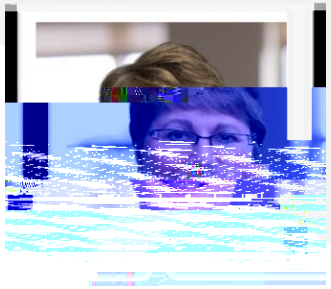
Discuss:

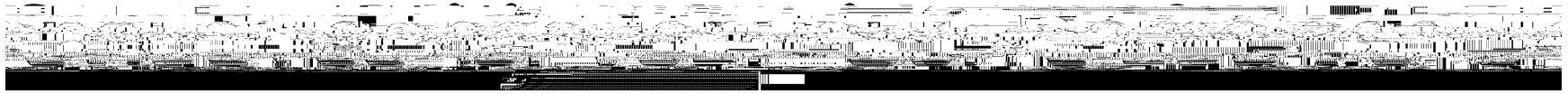
CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

Production of All Evidence to Both Parties

YOU ARE LISTENING TO: JANILYN DAUB

Hypothetical Scenario

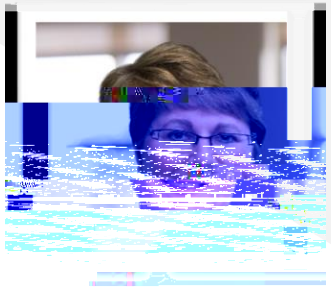




- Summary of Interviews
- Additional Evidence:
  - Text Messages
  - Snapchats

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, and intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

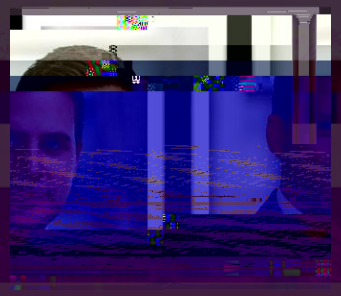
YOU ARE LISTENING TO: JANILYN DAUB



Discussion

- [redacted]
- [redacted]
- [redacted]
- [redacted]

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.



YOU ARE LISTENING TO: CHRIS RAYH

Issues

Two Opportunities to Weigh In

Opportunity 1: The Evidence

§ 106.45(b)(5)(vi):

- For [illegible] that is directly related to the allegations raised in the complaint
  - [illegible] determination
  - [illegible]
-

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

[redacted] – Key Risks

- [redacted]
- Know the "relevant facts"
-
- If evidence is missing, explain why
- Use of discretionary judgment
- Avoid conclusions and boilerplate
- [redacted]
  - Adjectives and adverbs
  - "However"

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: CHRIS BAYH

[redacted] Examination

- [redacted]
- [redacted]

examination

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: CHRIS BAYH

Relevance – how defined?

- ordinary meaning of the words should be understood and applied." Cmts. p. 811 fn 1018
- not [redacted]

CONFIDENTIAL ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

Relevance

- A few – §
  - Included “the complainant’s [illegible] prior sexual behavior”
    -
- Exceptions—
  - Applicant identity “[w]here it is [illegible] someone other than the respondent [illegible]”
  - Prior complainant [illegible] “proving [illegible] with respect to the respondent and are offered to prove consent”

CONFIDENTIAL © 2022 Bryan & Thornton, LLP. All Rights Reserved. This presentation,

Relevance

- [illegible]
  - [illegible]
  - [illegible]
- [illegible]
  - [illegible]
  - [illegible]
  - [illegible]

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: CHRIS RAYH

[illegible] [illegible]

‡ [illegible]

‡ However, § [illegible] i) "states that the decision-maker must not [illegible] cross-[illegible] resulting in exclusion of statements that remain [illegible] [illegible] examination" Cmt n 811 & fn 1017

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

Relevant or not?

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: CHRIS RAYH

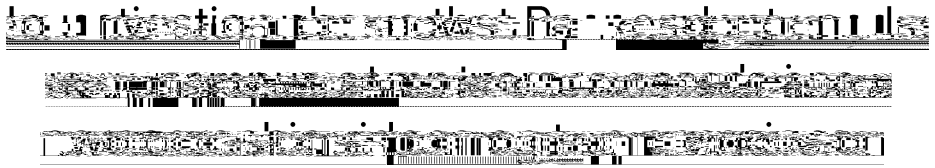
Relevant or not?

Complainant was in her pajamas for
was Halloween and complainant is
In our investigation, one of her friends who
ec that it was our with her that night stat
Complainant referred to her costume as
"

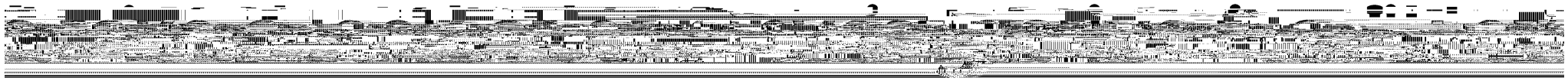
CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: CHRIS RAYH

Relevant or not?



CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.



CONFIDENTIAL ©2022 Barnes & Thornburg LLP. All Rights Reserved. This...

YOU ARE LISTENING TO: CHRIS RAYH

Relevant or not?

exaggerating. The friend offered two examples.

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: CHRIS RAYH

Relevant or not?

CONFIDENTIAL © 2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: CHRIS RAYH

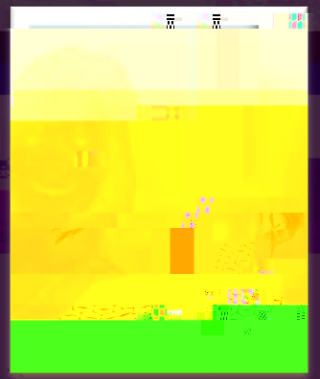
‡ Foundation for the hearing

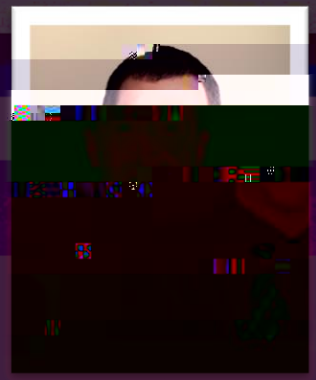
‡ Pre-

‡ Laying ground for eventual appeal

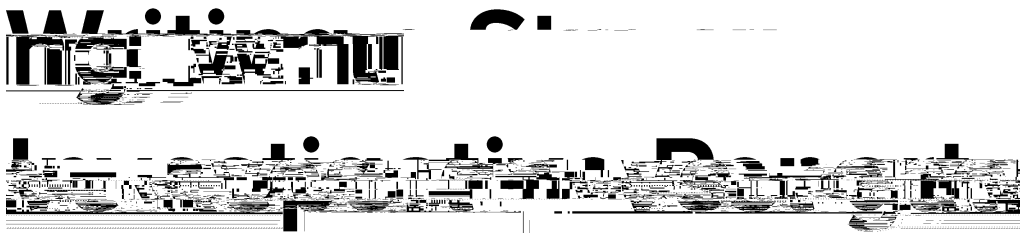
CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

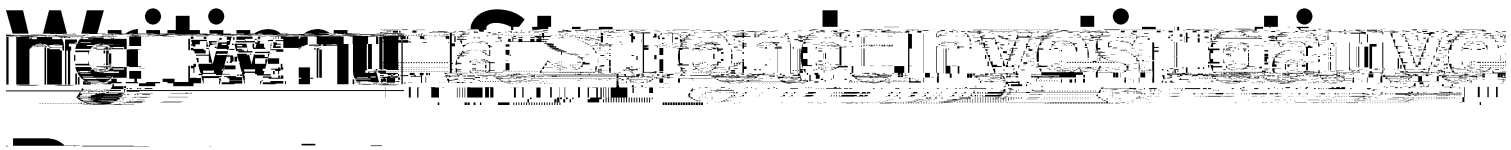
YOU ARE LISTENING TO: TRACY MAGINN , MARK SCUDDER

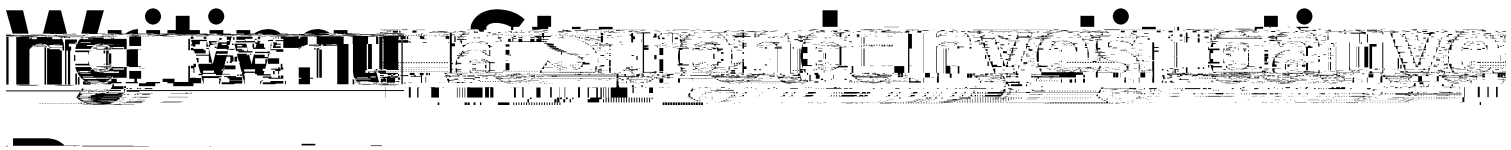




The Investigative Report







CONFIDENTIAL © 2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended orm

YOU ARE LISTENING TO: JANILYN DAUB

[illegible] &

Discussion

[illegible]

f

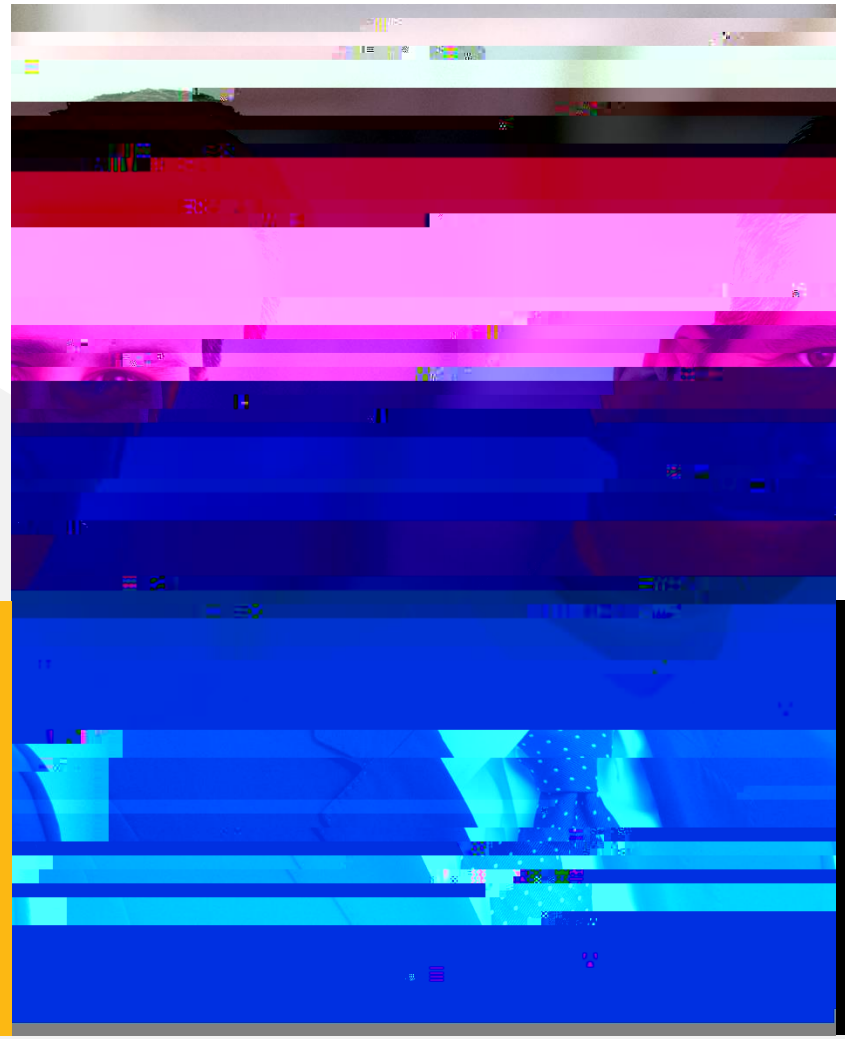
AT THE HEART OF HIGHER EDUCATION

Title IX Regulations: Issues for Decision Makers & Advisors

August 18, 2021

Attorney Work Product © 2021 Barnes & Thornburg LLP. All Rights Reserved.

Today's Speakers



TEAM LEAD

[redacted]

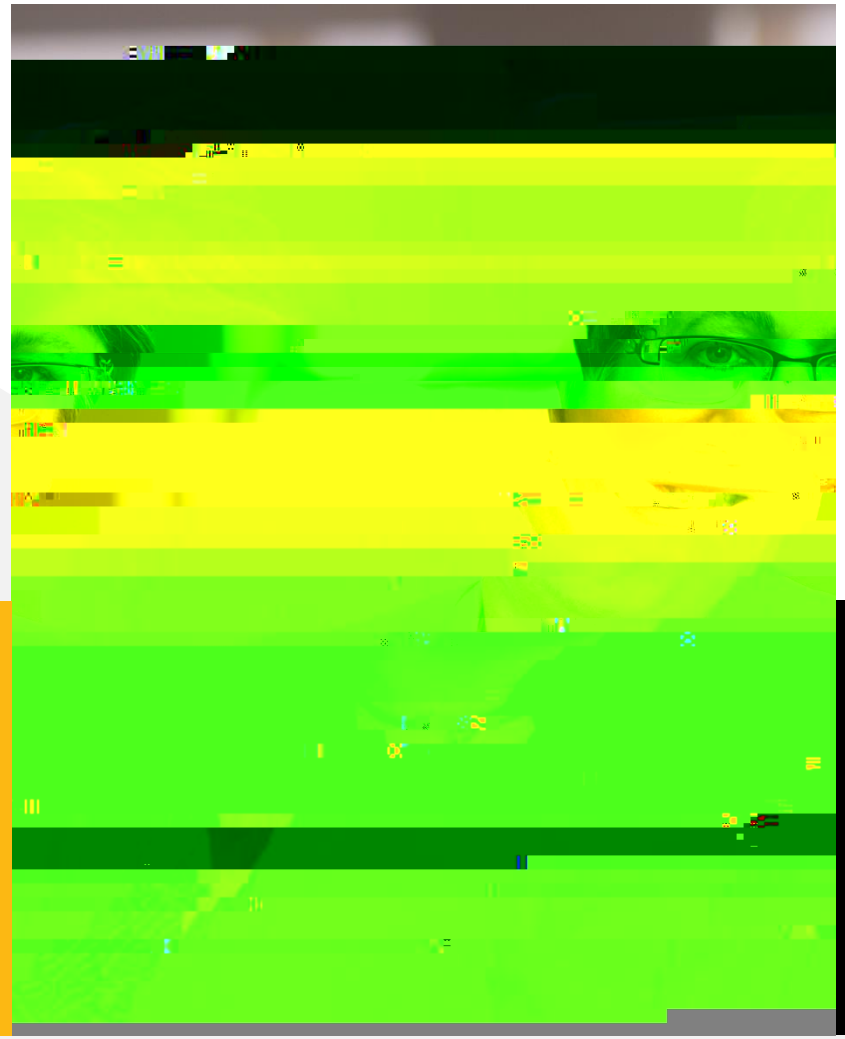
[redacted]

Indianapolis

317-231-7449

Chris serves as vice chair of the firm's Higher Education [redacted] represents and counsels higher ed clients in diverse areas of law, including civil defense, investigations, enforcement actions, financial responsibility, Title IX student financial aid and Title IX litigation and [redacted]. A former Division student-athlete, Chris also counsels colleges and universities on athletics compliance and best practices [redacted]

CONFIDENTIAL © 2021 [redacted] presentation, and all information in it, is confidential, proprietary, [redacted] intended [redacted] ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.



TEAM LEAD

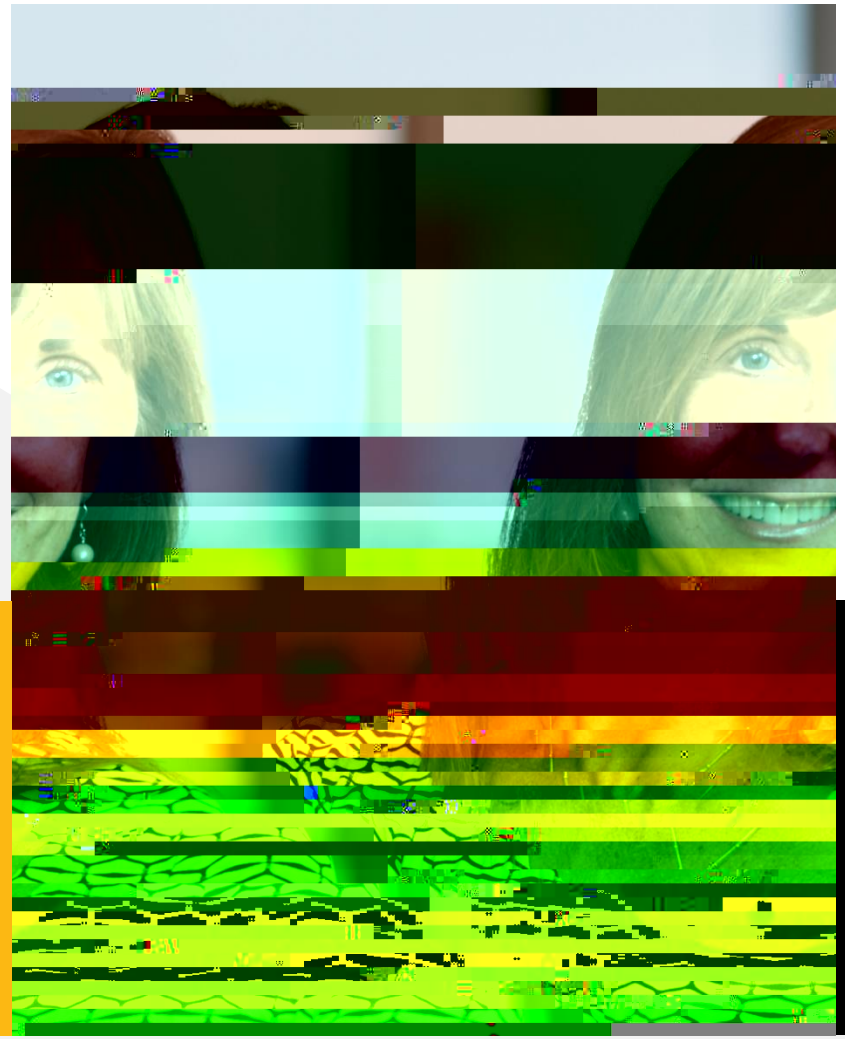
Janilyn Daub

Janilyn represents
clients involved in higher education and K-12 [illegible]
to comply with Title IX issues related to race, gender and
[illegible]
accommodation matters.

TEAM LEAD

[illegible]

[illegible]



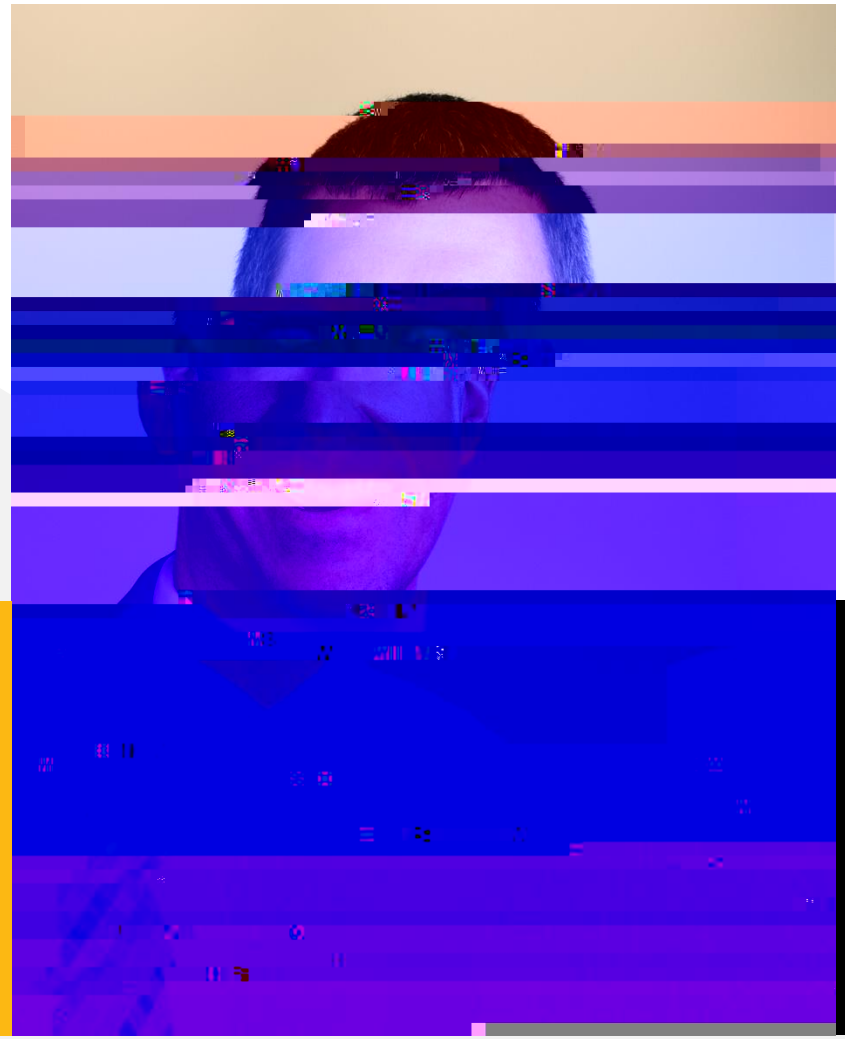
TEAM LEAD

Tracy Maginn

2001 Teresa was the Assistant Vice President and Counsel for the University of Notre Dame

employment discrimination and harassment

and disability accommodation issues.



TEAM LEAD

[redacted]

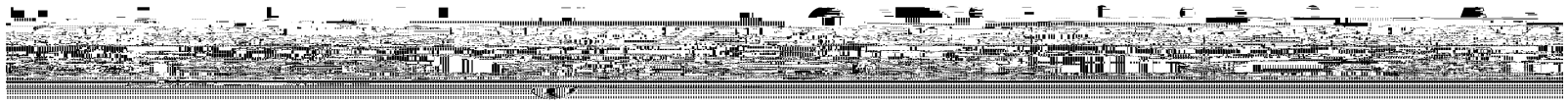
[redacted]

[redacted]

[redacted]-425-4618

[redacted] also a member of the firm's School Law Practice Group, [redacted] -secondary public and [redacted] discrimination complaints, sports and other extra-curricular issues, and civil litigation.

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.



These materials were prepared by the attorneys at the law firm of Barnes & Thornburg LLP. These materials present general information about [illegible] law and federal law, and they may serve as a beginning point for further investigation and study of the law relating to these topics. Although these materials present and discuss labor and employment issues, they are not to provide legal advice. Legal advice may be given and relied upon only on the basis of facts presented by a client to an attorney. Barnes & Thornburg LLP and the authors of these materials hereby disclaim any and all liability which may result from reliance on the information contained in these materials.

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

Agenda

- [illegible]
- [illegible]
- [illegible]
- [illegible]
- [illegible]
- [illegible]

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: MARK SCUDDER

[illegible]

- Big Picture Items
- [illegible]
- [illegible]
- [illegible]

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: MARK SCUDDER

IX Department

-
  -
-

This

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: MARK SCUDDER

- Hearings are now *mandatory* for all post-secondary schools
-
  each other
  - If represented by counsel, the hearing must be conducted live with cross-examination conducted by the party's advisor of choice
  - Can also be done virtually

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: MARK SCUDDER

- Audio
- Audiovisual
- [illegible]

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: MARK SCUDDER

Hearing Procedure

- Questions?
- Answers?
- Questions for the hearing officer?
-

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

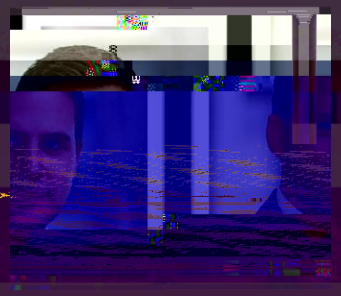
Advisors & Cross-Functional

YOU ARE LISTENING TO: MARK SCUDDER

[illegible]

- Advisors must be allowed to cross-[illegible]
- [illegible]

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.



YOU ARE LISTENING TO: CHRIS RAYH

Mock Hearing Scenarios/

YOU ARE LISTENING TO: CHRIS RAYH

ƒ Scenario to illustrate some key concepts

CONFIDENTIAL © 2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: CHRIS BAYH

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: CHRIS BAYH

Key Issues We Tackled

- [illegible]
- Opportunity to be heard
- Relevance
- Leading questions
- Bias

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: CHRIS BAYH

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: CHRIS BAYH

Key Issues We Tackled

- Relevance
- [illegible]
- Mistaken identity
- [illegible]
- [illegible]

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

Relevance

- A few – § 106.45(b)(6)(i):
  - [redacted]
    - Think: rape shield laws
  - Exceptions—[redacted]
    - [redacted] alleged”
    - Prior complainant [redacted] consent”

YOU ARE LISTENING TO: CHRIS BAYH

Reference – making the call

- *f*
- *f*
  - investigative report under §
- *f* Choose judge based on litigation experience, skill and temperament

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: CHRIS BAYH

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: CHRIS RAYH

Cross-Examination

- -examination.
- “
  - ”
    - statements.”
- Who makes

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: CHRIS BAYH

Cross-Examination trouble spots

- Where someone started to say something
  - Expressions of [illegible]
  - Emails and text messages
  - Hearsay—"I heard…"; "he told me…"; etc.
- Really [illegible] cross-
  - Which side is offering the statement into evidence? It's the other side that must have the [illegible]
  - Third party [illegible] refusing to testify.

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: CHRIS BAYH

Deciding what evident can

CONFIDENTIAL ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: CHRIS BAYH

Hearsay – [illegible]

- [illegible]
- However, § 106.45(b)(6)(i[illegible]-maker must not rely on the [illegible] statement of a party or witness who does not submit to cross-examination [illegible] examination" Cmts. p. 811 & fn. 1017
- Think:
  - [illegible]
  - Is the original speaker the same [illegible]?

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: CHRIS BAYH

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: CHRIS BAYH

Key Issues We Tackled

- Relevance

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: CHRIS BAYH

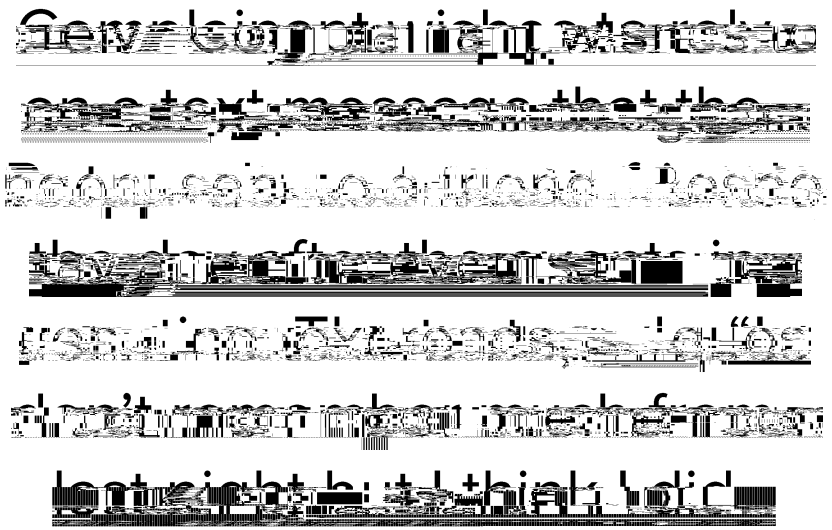
Cross

CONFIDENTIAL ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

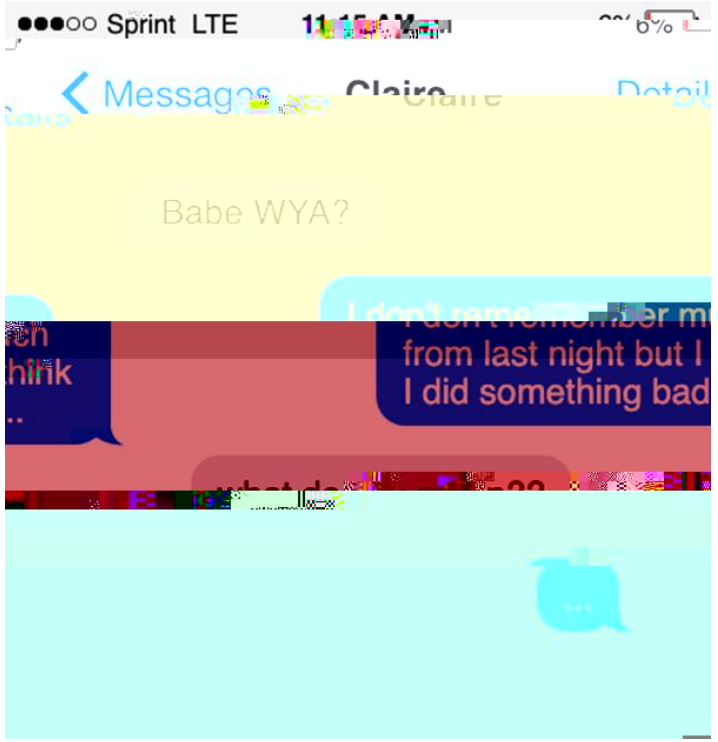
Key Issues We Tackled

YOU ARE LISTENING TO: CHRIS BAYH

Deciding what evident can



refuses to testify.



CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, and intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: MARK SCUDDER

YOU ARE LISTENING TO: MARK SCUDDER

made?

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: MARK SCUDDER

What is required in the complaint?

- Identification of the allegations
- Description of the procedural steps taken from the complaint through the determination
  - Must include:
    -
    -
    - Site visits
    - Methods used to gather evidence
    - Hearings held

CONFIDENTIAL © 2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: MARK SCUDDER

[illegible]

- [illegible]
- [illegible]
- [illegible]
- [illegible]
- [illegible]

CONFIDENTIAL © 2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: MARK SCUDDER

become final?

- [redacted]

  OR

- [redacted]

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: MARK SCUDDER

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: MARK SCUDDER

Basis for Appeals

- Procedural irregularity that affected the outcome of the matter;
- [redacted]
- The Title IX Coordinator's investigator(s)' conclusions [redacted] interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, and intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: MARK SCUDDER

- Notify the other party in writing when an appeal is filed;
- [illegible]
- Ensure that the decision-[illegible]
- [illegible]
- [illegible]
- [illegible]

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

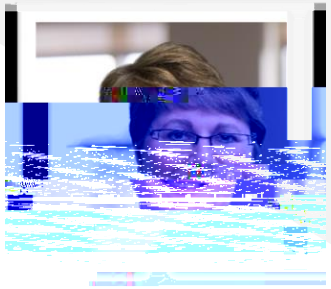
YOU ARE LISTENING TO: MARK SCUDDER

[illegible]

- [illegible]
  - Records of investigation
  - [illegible]
  - [illegible]
  - [illegible] resolution
  - [illegible]

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended
ormation in this presentation is intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

YOU ARE LISTENING TO: JANILYN DAUB



YOU ARE LISTENING TO: JANILYN DAUR

Key Takeaways

- [redacted]
- Hearings are now mandatory
  - [redacted]
- Relevance is key!
- [redacted] future appeals.

CONFIDENTIAL. ©2022 Barnes & Thornburg LLP. All Rights Reserved. This presentation, and all information in it, is confidential, proprietary, intended for informational purposes only and shall not be construed as legal advice or a legal opinion of Barnes & Thornburg.

Attorney Work Product © 2024 Barnes & Thornburg LLP. All Rights Reserved.